

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
AND THE
STATE OF WASHINGTON DEPARTMENT OF ECOLOGY**

IN THE MATTER OF:)	
)	
The U.S. Department of Energy,)	HANFORD FEDERAL FACILITY
Richland Operations Office,)	AGREEMENT AND CONSENT ORDER
Richland, Washington)	
)	
)	EPA Docket Number: 1089-03-04-120
Respondent)	Ecology Docket Number: 89-54

Based on the information available to the Parties on the effective date of this HANFORD FEDERAL FACILITY AGREEMENT AND CONSENT ORDER ("Agreement"), and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

This Agreement is divided into five parts: Part One contains introductory provisions which apply to Parts Two, Three, Four, and Five: Part Two contains provisions governing hazardous waste treatment, storage and disposal (TSD), hazardous waste facility permitting, closure and post-closure activities; Part Three contains provisions governing remedial and corrective action activities; Part Four contains provisions which delineate in part the respective roles and interrelationships between EPA and Ecology, and between CERCLA and RCRA on the Hanford Site; and Part Five contains common provisions which apply to Parts Two, Three, and Four. CERCLA response actions and corrective actions under HSWA, before and after State authorization, shall be governed by Part Three of this Agreement. RCRA compliance, and TSD permitting, closure, and post closure care (except HSWA corrective action) shall be governed by Part Two of this Agreement.

This Agreement also consists of Attachment 1, a letter dated February 26, 1989 from the Department of Justice to the Department of Ecology, Attachment 2, the Action Plan, and Attachment 3, the Mutual Cooperation Funding Agreement between the Department of Ecology and the Department of Energy. In the event of any inconsistency between this Agreement and the attachments to this Agreement, this Agreement shall govern unless and until duly modified pursuant to Article XXXIX of this Agreement.

The Action Plan contains plans, procedures and implementing schedules. The Action Plan is an integral and enforceable part of this Agreement.

PART ONE

INTRODUCTION

ARTICLE I. JURISDICTION

1. The U.S. Environmental Protection Agency (EPA), Region 10, enters into this Agreement pursuant to Section 120(e) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9620(e), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA), and Sections 6001, 3008(h), and 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616 (hereinafter jointly referred to as RCRA) and Executive Order 12580.

2. Pursuant to Section 3006 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6926, EPA may authorize states to administer and enforce a state hazardous waste management program, in lieu of the federal hazardous waste management program. The State of Washington has received authorization from EPA to administer and enforce such a program within the State of Washington. The requirements of the federally authorized state program are equivalent to the requirements of the federal program set forth in Subtitle C of RCRA and its implementing regulations (excluding those portions of the federal program imposed pursuant to HSWA for which the State of Washington has not yet been authorized). The Department of Ecology (Ecology) is the state agency designated by RCW 70.105.130 to implement and enforce the provisions of the Resource Conservation and Recovery Act as amended.

3. The State of Washington, Department of Ecology (Ecology) enters into this Agreement pursuant to CERCLA, RCRA, Washington Hazardous Waste Management Act, Chapter 70.105 RCW, and pursuant to Ecology's authority to issue regulatory orders under RCW 70.105.095.

4. The Parties agree that the generation, treatment, storage, and disposal of hazardous waste is regulated by the State of Washington, Department of Ecology pursuant to Ch. 70.105 RCW, the State Hazardous Waste Management Act (HWMA), and regulations governing the management of hazardous wastes are contained at Ch. 173-303 WAC, and finally that pursuant to Section 6001 of RCRA, 42 U.S.C. Sec. 6961, the United States Department of Energy (DOE), as a federal agency, must comply with the procedural and substantive requirements of such state law. DOE is a "person" as defined at RCW 70.105.010(7).

5. The U.S. Department of Energy (DOE) enters into this Agreement pursuant to Section 120(e) of CERCLA, Sections 6001, 3008(h), and 3004(u) and (v) of RCRA, Executive Orders 12580 (January 1987) and 12088 (Oct. 1978), and the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 et seq. DOE agrees that it is bound by this Agreement and that its terms may be enforced against DOE pursuant to the terms of this Agreement or as otherwise provided by law. As stated in Section 1006 of RCRA, nothing in this Agreement shall be construed to require DOE to take any action pursuant to RCRA which is inconsistent with the requirements of the Atomic Energy Act of 1954, as amended. In the event DOE asserts that it cannot comply with any provision of this Agreement based on an alleged inconsistency between the requirements of this Agreement and the Atomic Energy Act of 1954, as amended, it shall provide the basis for the inconsistency assertion in writing. In the event Ecology

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disagrees with the assertions by DOE, Ecology reserves the right to seek judicial review, or take any other action provided by law in case of any such alleged inconsistency.

6. The Parties are entering into this Agreement in anticipation that the Hanford Site will be placed on the National Priorities List (NPL), 40 CFR Part 300. The Hanford Site has been listed by EPA on the federal agency hazardous waste compliance docket under CERCLA Section 120, 52 Federal Register 4280 (Feb. 12, 1988). Four subareas of the Hanford Site have been proposed by EPA for addition to the NPL, 53 Fed. Reg. 23988 (June 24, 1988). [Note: The four areas of the Hanford Site were officially listed on the NPL on November 3, 1989 (Federal Register 41015, October 4, 1989)]. When the Hanford Site, or subareas of the Site, is placed on the NPL, Parts One, Three, Four, and Five of this Agreement shall also serve as the Interagency Agreement required by CERCLA Section 120(e). Parts One, Two, Four, and Five of this Agreement shall serve as the RCRA provisions governing compliance, permitting, closure and post-closure care of treatment, storage or disposal (TSD) Units. The Action Plan, at Appendix B, lists those TSD Groups or Units regulated by Ch. 70.105 RCW. As the categorization effort continues, TSD Units may be added to this list. DOE agrees that those TSD Units listed in Appendix B of the Action Plan, and any additional TSD Units which are identified as TSD Units in the future are subject to the regulatory framework of Ch. 70.105 RCW pursuant to RCRA Section 6001. Ecology's authority over these TSD Units shall not be abrogated or affected by the nomination or ultimate inclusion of the Hanford Site on the NPL and such Units shall be regulated in accordance

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with this Agreement; provided, however, that with respect to conflicts between EPA and Ecology, Article XXVIII (RCRA/CERCLA Reservation of Rights) shall be controlling.

7. On April 13, 1993, the District Court for the Eastern District of Washington issued an Order Granting in Part and Denying in Part Motions to Dismiss claims of the plaintiffs in Heart of America Northwest v. Westinghouse Hanford Company, No. CY-92-144-AAM. The court concluded in its opinion that this Agreement embodies an integrated response action under Sections 120 and 104 of CERCLA, and that plaintiffs' claims consequently were barred by Section 113(h) of CERCLA. Plaintiffs did not seek to enforce this Agreement, but instead sought to impose requirements that were not part of this Agreement. Nothing in the court's opinion affects the enforceability of this Agreement. All parties reaffirm that this Agreement is enforceable in accordance with all its terms, reservations and applicable law.

ARTICLE II. PARTIES

8. The Parties to this Agreement are EPA, Ecology, and DOE.

9. DOE shall provide a copy of this Agreement and relevant attachments to each of its prime contractors. A copy of this Agreement shall be made available to all other contractors and subcontractors retained to perform work under this Agreement. DOE shall provide notice of this Agreement to any successor in interest prior to any transfer of ownership or operation.

10. DOE shall notify EPA and Ecology of the identity and the scope of work of each of its prime contractors and their subcontractors to be used in carrying out the terms of this Agreement in advance of their involvement in such work. Upon request, DOE shall also provide the identity and work scope of any other contractors and subcontractors performing work under this

Agreement. DOE shall take all necessary measures to assure that its contractors, subcontractors and consultants performing work under this Agreement act in a manner consistent with the terms of this Agreement.

11. DOE agrees to undertake all actions required by the terms and conditions of this Agreement and not to contest state or EPA jurisdiction to execute this Agreement and enforce its requirements as provided herein.

12. This Article II shall not be construed as a promise to indemnify any person.

13. DOE remains obligated by this Agreement regardless of whether it carries out the terms through agents, contractors, and/or consultants. Such agents, contractors, and/or consultants shall be required to comply with the terms of this Agreement, but the Agreement shall be binding and enforceable only against the Parties to this Agreement.

ARTICLE III. PURPOSE

14. The general purposes of this Agreement are to:

A. Ensure that the environmental impacts associated with past and present activities at the Hanford Site are thoroughly investigated and appropriate response action taken as necessary to protect the public health, welfare and the environment;

B. Provide a framework for permitting TSD Units, promote an orderly, effective investigation and cleanup of contamination at the Hanford Site, and avoid litigation between the Parties;

C. Ensure compliance with RCRA and the Washington Hazardous Waste Management Act (HWMA), Ch. 70.105 RCW, for TSD Units including requirements covering permitting, compliance, closure, and post-closure care.

D. Establish a procedural framework and schedule for developing, prioritizing, implementing and monitoring appropriate response actions at the Hanford Site in accordance with CERCLA, the National Contingency Plan (NCP), 40 CFR Part 300, Superfund guidance and policy, RCRA, and RCRA guidance and policy;

E. Facilitate cooperation, exchange of information and the coordinated participation of the Parties in such actions; and

F. Minimize the duplication of analysis and documentation.

15. Specifically, the purposes of this Agreement are to:

A. Identify TSD Units which require permits; establish schedules to achieve compliance with interim and final status requirements and to complete DOE's Part B permit application for such Units in accordance with the Action Plan; identify TSD Units which will undergo closure; close such Units in accordance with applicable laws and regulations; require post-closure care where necessary; and coordinate closure with any inter-connected remedial action at the Hanford Site.

B. Identify Interim Action (IA) alternatives which are appropriate at the Hanford Site prior to the implementation of final corrective and remedial actions under RCRA and CERCLA. IA alternatives shall be identified and proposed to the Parties as early as possible and prior to formal proposal, in accordance with the Action Plan. This process is designed to promote cooperation among the Parties in promptly identifying IA alternatives.

C. Establish requirements for the performance of investigations to determine the nature and extent of any threat to the public health or welfare or the environment caused by any release and threatened release of hazardous substances, pollutants or contaminants at Hanford and to establish requirements for the performance of studies for the Hanford Site to identify,

evaluate, and select alternatives for the appropriate action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Hanford Site in accordance with CERCLA and HSWA.

D. Identify the nature, objective and schedule of response actions to be taken at the Hanford Site. Response actions at Hanford shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA (including applicable or relevant and appropriate state and federal requirements for remedial actions in accordance with Section 121 of CERCLA, 42 U.S.C. Sec. 9621), and HSWA.

E. Implement the selected interim and final remedial actions in accordance with CERCLA, and selected corrective actions in accordance with RCRA.

ARTICLE IV. STATUTORY COMPLIANCE AND RCRA/CERCLA INTEGRATION AND COORDINATION

16. Waste Management Units on the Hanford Site have been classified as either TSD units subject to Chapter 70.105 RCW or past-practice units subject to either CERCLA or the corrective action provisions of RCRA. Operable units have been formed which group multiple units for action in accordance with the Action Plan. Some units may be subject to and addressed by both Chapter 70.105 RCW and CERCLA and/or the corrective action requirements of RCRA. Part Two of this Agreement sets forth DOE's obligation to obtain TSD permits, to close TSD Units, and otherwise comply with applicable RCRA requirements. Part Three of this Agreement sets forth DOE's obligations to satisfy CERCLA and HSWA corrective action.

17. In this comprehensive Agreement, the Parties intend to integrate DOE's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants and contaminants covered by this Agreement. Therefore, the Parties intend that activities covered by Part Three of this Agreement will achieve compliance with CERCLA, 42 U.S.C. Section 9601 et seq.; will satisfy the corrective action requirements of the HWMA, Sections 3004(u) and (v) of RCRA, 42 U.S.C. Section 6924(u) and (v), for a RCRA permit, and Section 3008(h), 42 U.S.C. Section 6928(h); and will meet or exceed all applicable or relevant and appropriate federal and state requirements to the extent required by Section 121 of CERCLA, 42 U.S.C. Section 9621. The Parties agree that with respect to releases covered by this Agreement, RCRA, and RCW Chapters 70.105 and the Model Toxics Control Act (Initiative 97) as codified beginning March 1, 1989, shall be incorporated where appropriate as "applicable or relevant and appropriate requirements" pursuant to Section 121 of CERCLA.

18. The Parties agree that past-practice authority may provide the most efficient means for addressing groundwater contamination plumes originating from both TSD and past-practice units. However, in order to ensure that TSD units at Hanford are brought into compliance with RCRA and state hazardous waste regulations, Ecology intends, subject to Part Four of this Agreement, that remedial actions that address TSD groundwater contamination, excluding situations where there is an imminent threat to the public health or environment, will meet or exceed the substantive requirements of RCRA.

19. Based on the foregoing, the Parties intend that any remedial or corrective action selected, implemented and completed under Part Three of this

Agreement shall be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further remedial or corrective action. The Parties intend that such actions will address all aspects of contamination at units covered by the Action Plan so that no further action will be required under federal and state law. However, the Parties recognize and agree that remediation of groundwater contamination from TSD units at the Hanford Site may be managed either under Part Three of this Agreement, or under Part Two of this Agreement, in accordance with the Action Plan. Ecology reserves the right to enforce timely cleanup of TSD associated groundwater contamination as provided in Article XLVI (Reservation of Rights).

20. Ecology will administer the HWMA, in accordance with this Agreement, including those provisions which have not yet been authorized under RCRA Section 3006. Ecology has received authorization from EPA to implement the corrective action provisions of RCRA pursuant to Section 3006 of RCRA, and shall administer and enforce such provisions in accordance with this Agreement. Ecology may enforce the RCRA corrective action requirements of the Agreement pursuant to Article X (Enforceability), and any disputes with DOE involving such corrective action requirements shall be resolved in accordance with Article VIII (Resolution of Disputes). Disputes arising under Part Two of this Agreement including provisions of the HWMA for which the State is not authorized shall be resolved in accordance with Article VIII (Resolution of Disputes). Any disputes between EPA and Ecology concerning Subtitle C RCRA requirements will be resolved in accordance with Part Four. EPA and Ecology agree that when permits are issued to DOE for hazardous waste management activities pursuant to Part Two of this Agreement, requirements relating to remedial action for hazardous waste management units under Part Three of this

Agreement shall be the RCRA corrective action requirements for those units, whether that permit is administered by EPA or Ecology. EPA and Ecology shall reference and incorporate the appropriate provisions, including schedules (and the provision for extension of such schedules) of this Agreement into such permits.

21. Nothing in this Agreement shall alter the DOE's authority with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. Sec. 9604, as provided by Executive Order 12580.

ARTICLE V. DEFINITIONS

22. Except as noted below or otherwise explicitly stated, the appropriate definitions provided in CERCLA, RCRA, the NCP, Ch. 70.105 RCW and Ch. 173-303 WAC shall control the meaning of terms used in this Agreement. In addition:

A. "Action Plan" means the implementing document for this Agreement, which is set forth as Attachment 2 and by this reference incorporated into this Agreement. The term includes all amendments to that document, which the Parties anticipate will be made periodically.

B. "Additional Work" means any new or different work outside the originally agreed upon scope of work, which is determined pursuant to Article XXX (Additional Work).

C. "Agreement" means this document and includes all attachments, addenda and modifications to this document, which are required to be written and to be incorporated into or appended to this document.

D. "Applicable or Relevant and Appropriate Requirements" (ARAR) means any standard, requirement, criteria or limitation as provided in Section 121(d)(2) of CERCLA.

E. "Article" means a subdivision of this Agreement which is identified by a Roman numeral.

F. "Authorized Representative" is any person, including a contractor, who is specifically designated by a Party to have a defined capacity, including an advisory capacity.

G. "Days" mean calendar days, unless otherwise specified. Any submittal, written notice of position or written statement of dispute that would be due under the terms of this Agreement on a Saturday, Sunday or federal or state holiday shall be due on the following business day.

H. "Dispute Resolution" means the process for resolving disputes that arise under this Agreement.

I. "DOE" or "US DOE" means the United States Department of Energy, its employees and Authorized Representatives.

J. "Ecology" means the State of Washington Department of Ecology, its employees and Authorized Representatives.

K. "EPA" means the United States Environmental Protection Agency, its employees and Authorized Representatives.

L. "Hanford," "Hanford Site," or "Site" means the approximately 560 square miles in Southeastern Washington State (excluding leased land, State owned lands, and lands owned by the Bonneville Power Administration) which is owned by the United States and which is commonly known as the Hanford Reservation (see map at Figure 7-1 in the Action Plan). This definition is not intended to limit CERCLA or RCRA authority regarding hazardous wastes, substances, pollutants or contaminants which have migrated off the Hanford Site.

M. "Hazardous Substance" is defined in CERCLA Section 101(14).

N. "Hazardous Waste" are those wastes included in the definitions at RCRA Section 1004(5) and RCW 70.105.010(15).

O. "HWMMA" shall mean the Hazardous Waste Management Act as codified at Ch. 70.105 RCW, and its implementing regulation at Ch. 173-303 Washington Administrative Code.

P. "HWSWA" shall mean the Hazardous and Solid Waste Amendments of 1984, P.L. 98-616.

Q. "HWSWA Corrective Action" means those corrective action requirements set forth in Sections 3004(u) and (v) and 3008(h) of RCRA; and, state equivalents.

R. "lead regulatory agency" is that agency (EPA or Ecology) which is assigned regulatory oversight responsibility with respect to actions under this Agreement regarding a particular Operable Unit, TSD Unit/Group or Milestone pursuant to Section 5.6 of the Action Plan. The designation of a lead regulatory agency shall not change the jurisdictional authorities of the Parties.

S. "Radioactive Mixed Waste" or "Mixed Waste" are wastes that contains both hazardous waste subject to RCRA, as amended, and radioactive waste subject to the Atomic Energy Act of 1954, as amended.

T. "Operable Unit" means a discrete portion of the Hanford Site, as identified in Section 3.0 of the Action Plan.

U. "Paragraph" means a numbered paragraph (including subparagraphs) of this Agreement.

V. "Part" means one of the five major divisions of this Agreement.

W. "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended. For purposes of this Agreement, "RCRA" also includes HWMMA, Ch. 70.105 RCW.

X. "RCRA Permit" means a permit under RCRA and/or HWMMA for treatment, storage or disposal of hazardous waste.

Y. "Timetables and deadlines" means major and interim milestones and all work and actions (not including target dates) as delineated in the Action Plan and supporting work plans (including performance of actions established pursuant to the Dispute Resolution procedures set forth in this Agreement).

Z. "TSD Group" means a grouping of TSD (treatment, storage or disposal) Units for the purpose of preparing and submitting a permit application and/or closure plan pursuant to the requirements under RCRA, as determined in the Action Plan.

AA. "TSD Unit" means a treatment, storage or disposal Unit which is required to be permitted and/or closed pursuant to RCRA requirements as determined in the Action Plan.

BB. "Waste Management Unit" means an individual location on the Hanford Site where waste has or may have been placed, either planned or unplanned, as identified in the Action Plan.